July 14, 2000

Susan Kennedy, Cabinet Secretary
Office of Governor Gray Davis
State Capitol
Sacramento, CA 95814

David Hayes, Deputy Secretary
Department of Interior
1825 C Street NW
Washington DC 20240

Re: **Recommended Clarifications Regarding the CALFED Framework for Action**

Dear Cabinet Secretary Kennedy and Deputy Secretary Hayes:

I am pleased to offer the following recommended clarifications regarding the CALFED Framework for Action on behalf of NRDC's over 85,000 California members. NRDC believes that CALFED's integrated, ambitious approach to water issues is the best hope for making dramatic progress towards a healthy Bay-Delta ecosystem, high quality water and a water policy designed to serve California well over the coming decades. Achieving this lofty goal will require a truly visionary plan. We applaud the state and federal teams for your work to date. The framework is a good first step towards that visionary plan. We hope that the following recommendations can assist CALFED in designing a final program that reflects the best available analysis, that represents a balanced approach with significant benefits for the ecosystem and the entire state, and that meets legal requirements.

Progress in the Framework: The framework represents real progress in several key areas. We believe that maintaining this progress is essential for CALFED to develop a workable solution.

Recommendation: Assure that the final ROD fully reflects the progress made in the framework regarding the following key issues.

Water Use Efficiency. The framework recognizes the need for a $3 billion water use efficiency program. We provide recommendations below to assure that these funds will be effectively spent.

User Fees: The document calls for at least $35 million in user fees to help support the CALFED program, including the EWA and the ERP. Our recommendations below would link these user fees to EWA assurances.

Groundwater Management. The framework recognizes that "long-term effective groundwater management throughout California will be essential to the success of a number of CALFED programs" (Appendix H) and calls for legislation to establish and effective, comprehensive, basin-wide groundwater management program.

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Ecosystem Restoration. The framework recognizes the need for an ambitious, science-based ecosystem restoration effort, with at least $1 billion in funding (not including EWA funding) during Stage 1. We offer recommendations below to assure that needed funding will be provided.

Dam Removal. The framework calls for an ambitious effort to modify or remove specific dams, and calls for a comprehensive program to identify further fish migration barrier removal needs.

San Joaquin River Restoration. In the discussion of possible Sierra/Delta water trades for water quality purposes, the framework recognizes the priority of main-stem San Joaquin River restoration needs.

Delta Conveyance: The framework appropriately broadens the analysis of conveyance beyond the Hood diversion. We continue to believe that the timeline included in this section is too compressed.

Surface Storage: CALFED has consistently insisted that a new direction in water policy will best serve California. To your credit, CALFED agencies have consistently maintained that the program will not lead to old-fashioned multi-purpose water development projects. The framework reflects this in the introduction, in calling for "more strategically managed storage" (p. 3).. Such strategic management is essential to determine if new surface storage is justified from an economic, water quality or ecosystem perspective and, if so, how much and where. This section of the framework does not yet fulfill the promise of the CALFED program.

The framework calls for the creation of over 1,000,000 acre-feet of new surface storage, through the four specific top priority projects. This is comparable to an additional reservoir the size of Folsom Reservoir. The operation of 1,000,000 acre-feet of new surface storage could cause serious impacts to the environment and could undermine the Ecosystem Restoration Program. We continue to believe that CALFED has demonstrated neither the need for additional surface storage facilities nor their compatibility with ecosystem restoration. Nevertheless, CALFED agencies are proposing to move forward with site specific analysis and permitting for four top priority projects. We offer the following recommendations that would, we believe, provide valuable information for the evaluation of these proposed facilities.

Operations Plans: Benefits and impacts from water supply facilities are determined not simply by project purposes, but by their actual operation. CALFED has paid little attention to developing and discussing operations plans for proposed facilities. In addition to clarifying project purposes, CALFED should begin to develop and to circulate proposed operations plans for these proposed surface storage facilities. Such operations plans would go beyond simply identifying project purpose and would present operational rules addressing such issues as wet and dry year operations, fill windows and rates, allocation of yield (if any) and priority in terms of flood releases and deliveries.

Recommendation: Page 14, following point (6). Add - "By the middle of 2001, CALFED will prepare and release proposed operations plans for in-Delta storage, Los Vaqueros and San Luis Reservoir. By the middle of 2002, CALFED will prepare and release proposed operations plans for Shasta, Sites and San Joaquin River storage."

New Capacity at San Luis Reservoir: The document states that a San Luis bypass could create an "effective storage capacity enhancement at San Luis Reservoir of up to 200 TAF" (p. 13). The environmental community has indicated conceptual support for a bypass that would help address the low point problem in San Luis. CALFED agencies, however, have not addressed how the "effective new storage" would be operated. The document presents no detail regarding this issue. This new storage could provide needed capacity to store EWA water.

Recommendation: Page 13, end of point (4). Add "The Environmental Water Account will have first priority for the use of this new storage, thus providing improved operational flexibility and increased water supply reliability."

Los Vaqueros: The framework states the need to respect commitments made to and by voters in Contra Costa County. However, conversations with CALFED agency staff reveal that some contemplated operations of an expanded Los Vaqueros – including possible use of new yield for Central Valley or Southern California water users -- would violate these commitments. We urge CALFED to clarify the project purpose for this proposal. The environmental community, CCWD and Contra Costa County voters agree that Los Vaqueros must not be operated to provide new water supplies. In an April 27, 2000 letter to Environmental Defense, CCWD stated their position very clearly -- "Any such expansion must be for Delta improvements and water quality, not supply". In addition, given the wide array of potential Bay Area water quality strategies, any evaluation of a Los Vaqueros expansion must be in the context of a truly comprehensive evaluation of water quality alternatives.

Recommendation: Top of page 13, point (3), after "to Bay Area water users." Add "and would be operated to assure no expansion of Delta diversions and no increase in Bay Area or state-wide yield. This project will be analyzed as part of a comprehensive Bay Area water quality study that will include a full range of alternative water quality strategies".

In-Delta Storage: The framework does not define "enhanced project flexibility", one of the purposes indicated for the proposed in-Delta storage project. As defined by the Environmental Water Account, flexibility means increasing the reliability of existing supplies and the ability to move the current baseline of Delta pumping to more environmentally benign "windows". Others have offered definitions of "flexibility" that are indistinguishable from traditional yield expansion (see our letter of May 30, 2000 to Bruce Babbitt). In order to focus further analysis regarding benefits and environmental impacts, the document should define "flexibility".

Given water quality concerns, in-Delta storage is unlikely to provide water for urban users. Given the price of water from in-Delta storage, agricultural water users could not afford a "beneficiary pays" financing plan for water from this project. We recommend, therefore, that the document define the most likely two remaining potential purposes: fisheries and flexibility.

Recommendation: Page 12, point (1), after "water project flexibility." Add "without increasing diversions above the baseline established in Appendix B."

Shasta Dam: The only project purpose mentioned explicitly in the framework for this project is providing Sacramento River temperatures required for fisheries protection. Although a larger reservoir might create the possibility of a larger cold water pool, it is no guarantee that such a pool will be created nor that the raised dam would be operated to provide additional fish benefits. In fact, for decades, the large cold water pool in Shasta Reservoir has regularly been drawn down to provide water supply for CVP contractors, leading to serious impacts to fisheries. In short, an expanded Shasta reservoir does not guarantee fisheries benefits.

Recommendation: Page 12, point (2) after "other water management benefits." Add "Reducing temperature violations that threaten anadromous species, including species listed under the state and federal ESA's, will have priority in the operation of the increased storage capacity."

State law currently prohibits the expansion of Shasta Dam. This prohibition was put in place by the California legislature to ensure the full protection of the outstanding qualities of the McCloud River. The framework should explicitly recognize that any expansion of Shasta must fully protect these values.

Recommendation: Page 12, point (2), add a new second bullet: "Prepare, by the end of 2002, a plan to fully mitigate the potential impacts to fish and wildlife, including blue ribbon trout fisheries, riparian and free-flowing riverine habitat on the McCloud, Pit and Sacramento Rivers."

Financing: The document states that final cost allocations will be made based on the principle of 'beneficiaries pay'." However, the document does not contain any definition of this principle. Clearly, interest and other subsidies should be eliminated in any meaningful definition of "beneficiaries pay."

Recommendation: Page 15, Finance paragraph, following "beneficiaries pay". Add ", without capital, interest, operations and maintenance or other public subsidies."

Clean Water Act Compliance: The framework states that the MOU for 404 compliance will rely on the CALFED screening process regarding alternative sites. We have several comments. First, the framework inadequately defines the project purposes for these proposed projects. A meaningful alternatives analysis cannot be completed until the project purpose is fully defined. Second, an analysis of alternatives under Section 404(b)(1) may not be confined simply to an analysis of alternative surface storage sites; many other non-surface-storage strategies are available for each of the project purposes discussed in the framework. Third, new information becomes available over time and, given the long timeline for some of these facilities, the 404 alternatives analysis must include a full range of alternatives using the most recent information.

Recommendations: Page 16, third bullet. Replace second and third sentences with – "The MOU will discuss procedures to assure full compliance with CWA requirements." For further recommendations, see also Drew Caputo's letter to Charles Fox, EPA, dated November 24, 1999.

Endangered Species Act Compliance: The framework states that the CALFED screening process has identified and addressed most potential ESA issues on a programmatic level. However, CALFED has not yet determined clearly the purpose or proposed operations of each of these proposed projects. The "programmatic ESA impacts" of new surface storage facilities will be greatly influenced by the project purpose and operations. For example, the same storage facility operated for water quality, EWA or yield benefits could have dramatically different programmatic ESA impacts.

Recommendation: Page 16, first bullet. Delete the second sentence.

Other Surface Storage Projects. Finally, CALFED agencies must address the fact that some stakeholders are choosing to pursue major new surface storage projects outside of CALFED that CALFED itself has rejected. It is particularly unfortunate, for example, that the Yuba County Water Agency is proposing to use state funds to pursue the enlargement of state-owned Oroville Dam. CALFED has consistently stated its intention to perform a comprehensive analysis of surface storage and other water supply tools. We fear that recent developments suggest that the future may once again hold a fractured, uncoordinated, piecemeal approach to surface storage.

Recommendation: Revise the ROD to assure that major surface storage projects, particularly those controlled by CALFED member agencies, will not be "piecemealed" outside of the CALFED process.

Groundwater Storage: As in the case of surface storage, CALFED has not specified project purposes or proposed operations. CALFED has assured stakeholders that groundwater projects would result in environmental benefits. However, those benefits have never been specifically described.

Recommendation: Top of page 15. Add a new bullet "By the middle of 2001, CALFED will prepare and release a programmatic operations plans for proposed groundwater storage facilities."

Delta Diversions: CALFED has long stated that it is focused on increasing water supply reliability and project flexibility, not simply increasing yield. CALFED agencies have correctly pointed out that an increase in pumping capacity could be used to shift diversions, without an increase in net diversions. However, experience suggests that, without a clear operations plan and assurances, facilities tend to be used to their maximum capacity and to the detriment of the environment.

Recommendation: Page 17, second paragraph. Insert after the first sentence "The CALFED program, including proposed South Delta changes, will not result in a net increase in Delta diversions."

Pumping Windows: The period proposed for SWP pumping limit increases, March 15-December 15, will certainly present serious conflicts with fisheries.

Recommendation: Page 17, point (1). Modify the length of the proposed increase in authorized pumping capacity to a window more compatible with full fisheries protection.

Impacts of Pumping Increase on the Bay and Delta: It is not clear that an increase in pumping capacity is compatible with a restored ecosystem. In particular, the impacts of the diversion of peak flows on the Bay and on Suisun Bay marshes have never been fully investigated. This investigation may reveal further modifications that are needed to comply with CWA and ESA requirements and to support the Ecosystem Restoration Program.

Recommendation: Page 17, point (1) add a new final sentence "Such increased pumping is conditional upon full protection for fish, the Delta, Suisun Marsh and the Bay. The science program will convene a science panel, such as that which led to the development of the X2 standard, to develop an investigation program adequate to determine actions needed to protect Suisun Marsh and the Bay. The results of this program will be presented prior to the issuance of permits for this proposed action."

CVPIA Section 3406(b)(2): The framework appropriately clarifies (b)(2) accounting to provide assurances to water users that impacts caused by increases in storage will be considered. However, this clarification has had an unforeseen impact. It leaves open the possibility that the same (b)(2) water could be "double counted" under the offset provision – once when Delta pumping is reduced, leading to increased storage, and again if that water is released for outflow. The CVPIA requirement that DOI "dedicate and manage" 800,000 acre-feet of water prohibits this type of double counting. In addition, the documents submitted to Judge Wanger, including modeling results regarding the impacts of (b)(2) actions, included a version of "offset" that did not allow double counting. CALFED modeling suggests that this change could reduce the amount of (b)(2) water available in the Delta. Thus, this change could effectively reduce the EWA by 100,000 acre-feet, making a clarification of this section particularly important.

Recommendation: Appendix B. Add to the end of the "offset" bullet "Increased storage credited to (b)(2) will not be charged again to the (b)(2) account if it is released for environmental purposes before the end of the year."

Environmental Water Account: CALFED has made significant progress in clarifying the possible operations of an Environmental Water Account. A few additional clarifications are needed.

Restoration Objectives Beyond ESA Requirements: The framework states that the EWA will provide water "for the protection and recovery of fish" (p. 22). Clearly, the EWA is intended to provide water to support ecosystem restoration benefits that extend well beyond simply preventing take under the ESA. In fact, supporting such restoration is the only justification for any public funds to support the EWA – preventing take is the responsibility of the water projects. However, most of the discussion regarding the EWA has focused on take provisions.

Recommendation: Page 22, first paragraph. Add a new final sentence "Before the programmatic Biological Opinion is issued, fisheries agencies will develop an operations plan for the EWA that specifically addresses how EWA operations will provide support for ecosystem restoration, such as implementation of ERP Delta outflow targets, as well as compliance with the ESA."

EWA Not Sized to Mitigate for Increased Delta Pumping, New Surface and Groundwater Storage: The modeling that was used to "size" the EWA clearly assumed the current level of development and regulatory requirements. Therefore, it is clear that the EWA was not designed to mitigate potential increases in Delta pumping or new storage facilities. If these projects move forward, full mitigation would be required, which might include an expansion in the size of an EWA. The baseline should be clarified to reflect this fact.

Recommendation: Appendix B. Add a new bullet to Tier 1 "Existing Delta pumping limits and existing groundwater and surface storage capacity."

Refuge Water Supplies: Under the CVPIA, providing level 2 and level 4 refuge supplies are the clear and sole responsibility of the CVP. Modeling of the EWA has assumed that level 2 supplies are provided out of existing CVP yield, although some of it might be conveyed through the proposed joint point action. In addition, although level 4 supplies are provided without involuntary reallocation of CVP water, the EWA has not been designed to provide adequate water resources to contribute to this need. The baseline appendix should reflect these facts.

Recommendation: Appendix B. Add a new bullet to Tier 1 "Level 2 and level 4 refuge water supplies. (Level 4 refuge supplies are provided without involuntary reallocation of CVP supplies and may be provided through a variety of tools, however, the EWA was not designed to provide this water)."

Implementation Strategy for Tier 3: CALFED modeling has indicated the need for a "third tier" of water in order to provide confidence that the CALFED plan will not result in jeopardy to listed species. However, the framework as currently drafted does not assure that, if needed, tier 3 tools will be identified and implemented in a timely fashion.

Recommendation: Page 22, paragraph 5. Insert at the end of the paragraph ", consistent with timely action to protect fisheries. By April, 2001, CALFED will prepare an implementation strategy for Tier 3, establishing a timely scientific panel process and identifying tools and funding, should implementation of Tier 3 prove necessary."

Endangered Species Act and Ecosystem Restoration Program Linkages: CALFED is developing an ESA package that is premised on the implementation of "the baseline, the EWA and the ERP" (Appendix D). The environmental community has expressed serious concerns regarding the proposed ESA assurances. In response to these concerns, many CALFED biologists have stated - "Once we implement

the ERP, we will be on the road to recovery and ESA take will be less of a problem." Indeed, one of the premises of CALFED is that ecosystem recovery will reduce conflicts in the system. We agree. However, any ESA assurances must be directly and clearly linked to funding and implementation of the ERP and must ensure full compliance with al procedural and substantive requirements of the ESA.

ERP Funding, Upstream Flows and User Fees: Given the reliance on the ERP stated in Appendix D, ESA assurances must be clearly linked to full funding for the ERP. In discussions on this subject, CALFED staff have indicated that some sections of the ERP do not provide ESA benefits for species for whom ESA assurances would be provided. We would argue that the vast majority of the ERP provides either direct or indirect benefits to species that could be covered by ESA assurances. We recommend, therefore, that full funding for the entire ERP should be a requirement of ESA assurances.

Also, the water users who would benefit from ESA assurances should contribute directly to support the EWA. The framework calls for at least $35 million in new user fees. However, there is currently no assurance that ties these user fees to ESA assurances.

> *Recommendation*: Appendix D, second paragraph. Insert after the second sentence "ESA assurances will be contingent upon at least $35 million in water user fees, full funding, as described in Appendix A, of the ecosystem restoration program and upon the achievement of the schedule for the purchase of 200 TAF per year of upstream ERP flows, as indicated on page 6."

Water Use Efficiency: As discussed above, NRDC is pleased to see the projected $3 billion funding for water use efficiency. Although the level of funding falls short of the $4 billion requested by the Environmental Water Caucus, it is still a substantial financial commitment to water use efficiency, and should produce great benefits for the state. However, the framework document fails to reflect several key program elements that have broad stakeholder support. In particular:

Benefits and Objectives: The description of the Agricultural Water Use Efficiency Program omits reference to the targeted benefits/quantifiable objectives approach that is the foundation of the agricultural WUE program. NRDC (and EWC) support for the incentive-based program has been explicitly tied to the establishment of quantifiable objectives for water use efficiency and consequences for non-compliance.

Consequences: The framework inaccurately emphasizes that the program is "voluntary." Although the program is indeed incentive-based, achieving the quantifiable objectives is not voluntary. As you know, a committee of agricultural and environmental stakeholders are in the process of determining the consequences of failing to meet those objectives.

Urban Certification Program: The description of the urban water use efficiency program fails to reflect the extensive work that has already been done by the urban and environmental stakeholders to develop a certification program for urban water conservation. This program should be added to the ROD

Access to Benefits Linkages: Earlier CALFED documents stated that agencies would have to achieve a certain level of water use efficiency in order to obtain access to CALFED benefits, access to the state water bank, and other benefits. These assurances should be included in the ROD.

Water Savings Estimates: Finally, NRDC believes that the estimates of water savings included in the framework are too low for both the urban and agricultural sectors, and also fail to reflect the rerouted flow component of the Agricultural WUE program. We have taken an approach in the Agricultural WUE program that avoids reentering the endless argument about the magnitude of savings possible from WUE,

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and it seems unproductive to reignite that debate by including these low estimates in the framework document.

Recommendation: Page 23, first paragraph, last line. Delete "voluntary - not regulatory -". The Water Use Efficiency section should be clarified to address the above issues.

Water Transfers: The document recognizes the importance of appropriate water transfers in the management of water in California. However, the framework fails to discuss the single most important factor in establishing a functioning water market - user pays financing.

Recommendation: Page 34. Add a new element "(3) Eliminate subsidies that discourage water transfers. Public subsidies for water development can discourage efficient water use and reduce incentives for water users to enter the market, both as buyers and sellers. Moving to a "beneficiary pays" financing system for water development is the single most important element in a program to foster a functioning and appropriately regulated market."

Delta Subsidence and Dredged Material Reuse: Several stakeholders and agencies have pointed out the dramatic potential benefits to Delta stability, subsidence reversal and habitat creation from an ambitious dredged material reuse program, particularly if acceptable methods can be developed for the reuse of Bay dredged material. Some RWQCB staff have been hired to address dredged material reuse, however, they are primarily focused on the reuse of Delta dredged material.

Recommendation: Top of page 7. Add a new bullet - "Develop specific recommendations for potential habitat restoration using dredged material, including Bay material, provide adequate staff to address salinity and other issues, develop a pilot Delta restoration project using Bay dredged material and investigate possible synergies through reuse opportunities in the levee program."

Upstream Restoration Flows: The framework calls for the purchase of upstream restoration flows in the amount of "up to 100 TAF per year by the end of Stage 1". We do not believe that this amount represents an adequate step towards the ambitious goals of the ERP, which call for up to 600 TAF of flow augmentation. In addition, given that upstream restoration flows are needed for to species that could be covered by ESA assurances (e.g. salmonids), it is essential that CALFED establish both an end of Stage 1 target and annual milestones linked to ESA assurances.

Recommendation: Page 6. Replace "up to 100 TAF per year by the end of Stage 1" with "at least 200 TAF per year by the end of Stage 1, with increments of 50 TAF per year provided each year for the first four years."

Water Quality

Groundwater Quality Improvements: Solving groundwater contamination problems is a key to bringing on line new sources of water and new groundwater storage capacity. This issue has not received adequate attention in the water quality or water supply reliability sections.

Recommendation: Develop specific programmatic recommendations and funding amounts regarding groundwater clean-up in the groundwater and water quality sections.

Implementation Strategy for Water Quality Improvements for the Ecosystem: Fish and wildlife agencies will provide leadership for the implementation of most of the ERP. However, the water quality section of the ERP will require cooperation among the science program, fish and wildlife oriented agencies and

water quality agencies. Without a specific implementation strategy, this element of the ERP could fall between the cracks.

Recommendation: Develop a clear implementation strategy for the water quality section of the ERP.

Environmental Justice: A key part of the justification for public funding in CALFED is broad public benefits. However, many low income communities and communities of color have received few benefits from billions in public funding over the past century. In addition, many of the environmental impacts caused by the management and mismanagement of water projects fall disproportionally on these communities. CALFED should develop a comprehensive environmental justice program to identify and address impacts and develop benefits for targeted communities.

Recommendations: CALFED should modify the ROD to reflect the following changes:

Policy: Develop a broad environmental justice policy recognizing the importance of this issue and directing the program to develop specific programs and mechanisms to assure that these issues are addressed as CALFED is implemented.

Staffing: Include a commitment that the state and federal teams will each hire a full-time senior CALFED environmental justice coordinator.

Demonstration Projects: We support the specific project recommendations contained in the July 6, 2000 letter regarding these issues signed by several organizations, led by the Pacific Institute. These specific recommendations include:

- Linking water quality objectives with impacts to subsistence fishing communities through actions such as funding for toxic hot spot clean-up.
- Supporting environmentally benign water use efficiency actions that provide economic and other benefits to disadvantaged communities.
- Providing incentives to reduce urban and agricultural pollution through community involvement.
- Improving groundwater management through water quality improvements.

Thank you for considering our comments. We look forward to working closely with you to provide the clarifications needed to assure that CALFED develops the visionary plan that California needs and deserves.

Sincerely,

Barry Nelson
Senior Policy Analyst

cc: Senator Barbara Boxer
Senator Dianne Feinstein
Congressman George Miller
Congresswoman Ellen Tauscher
Senate President pro tempore John Burton
Senator Byron Sher
Assemblywoman Dion Aroner
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